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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

GREGORY E. BLACKCLOUD,

Defendant and Appellant.

H041419

(Santa Clara County

Super. Ct. No. C1349535)

I. Statement of the Case

Defendant Gregory E. Blackcloud was charged with attempted murder (Pen. Code, §§ 664, subd. (a), 187 – count 1)¹ and assault with a deadly weapon (§ 245, subd. (a) – count 2). As to both counts, it was also alleged that defendant personally used a deadly weapon in the commission of the offenses (§§ 12022, subd. (b)(1), 667, 1192.7) and personally inflicted great bodily injury on Edward Celaya, who was not an accomplice (§§ 12022.7, subd. (a), 1203, subd. (e)(3), 667, 1192.7).

Defendant waived his right to a trial by jury. At the conclusion of the court trial, defendant was found guilty on both counts. The trial court also found that defendant had used a knife in the commission of the offenses and personally inflicted great bodily injury

¹ All further statutory references are to the Penal Code unless otherwise stated.

on Celaya. On the prosecutor's motion, the trial court dismissed the section 12022, subdivision (b)(1) enhancement as to count 2.

The trial court sentenced defendant to state prison for 12 years. Defendant was sentenced to: (1) the upper term of nine years on count 1; (2) the upper term of three years on count two, which was stayed pursuant to section 654; and (3) a consecutive three-year term pursuant to section 12022.7, subdivision (a) as to count 1. The trial court struck the section 12022, subdivision (b) finding as to count 1 and the section 12022.7, subdivision (a) finding as to count 2.

The trial court ordered \$19,544.32 in restitution as stipulated by the parties. The trial court also imposed: a restitution fine of \$280; a court security fee of \$40; a criminal conviction fee of \$30; and a criminal justice administration fee of \$129.75. Defendant was awarded 655 days of presentence custody credits.

Defendant filed a timely notice of appeal.

II. Statement of Facts

A. Prosecution Case

Celaya rented a room in the home of defendant's mother and stepfather. Defendant's brother, David Blackcloud, also lived there. Before defendant moved into his family's home, there was an incident involving David and Celaya. David was arrested and prosecuted. David remained angry with Celaya and voiced his complaints about the police involvement while defendant was present.

On the night of February 5, 2013, defendant and Celaya were drinking together in Celaya's room. After about an hour, they went to the park to settle a bet on whether there was a bridge at the park. After establishing that Celaya had won the bet, defendant and Celaya went to a gas station to purchase cigarettes. When they left the gas station,

Celaya suggested that they return home by way of a main street, but defendant wanted to return through the park.

Defendant and Celaya continued drinking. When they entered the park, defendant suggested that they sit on a bench. At that point, defendant showed Celaya a knife and told him that he wanted to “go get somebody.” Defendant also said something to the effect of “Do you think your Norte family is stronger than my tribal family?” Celaya responded, “Let’s just go home, I have work tomorrow.” Defendant stood up and walked a short distance before calling out to Celaya, who was tying his shoelaces. As Celaya raised his head, defendant slashed his neck with a knife and said, “This is what we do for family.”

Celaya was bleeding heavily as he walked to some nearby houses and eventually persuaded someone to call the police. The police arrived within five minutes. Celaya told the officer that defendant had stabbed him. Celaya was transported to the hospital where he underwent surgery.

No knife was found in the park. The police searched defendant’s residence, but did not find either a weapon or bloody clothes. The parties stipulated that Celaya’s blood alcohol level was .27 and defendant’s blood alcohol level was .18.

B. Defense Case

Wanda Vasquez, defendant’s mother, testified that defendant was the only member of her family who was on speaking terms with Celaya. The police called her very early in the morning on February 6, 2013. She was told to come to the front door and open it. As she walked to the front door, she saw defendant playing video games. When she asked him why the police were there, he replied that he did not know. The police told her that defendant had stabbed Celaya. After she was allowed to return to her

home, she looked for a knife in the kitchen or evidence that anyone had been cleaning blood-stained items. She did not find any such evidence.

Defendant testified that he was present on four occasions when Celaya and his brother were arguing. Defendant tried to calm both of them down. Defendant drank with Celaya about three times per week.

Defendant began drinking at about 6:00 p.m. on February 5, 2013. When Celaya returned home, defendant gave him some malt liquor. After talking and drinking, they left to buy cigarettes. After Celaya showed him the bridge, they continued walking to the gas station. Defendant bought cigarettes. They returned to the park and sat on a bench. When they finished drinking, they returned home. Defendant played video games in the living room and Celaya went to his room. His mother asked him why the police were at the door. He told her that he did not know. He followed her to the door and was arrested. Defendant denied that he assaulted Celaya or slashed his throat with a knife.

The audio recording and transcripts of Celaya's statements to the police were admitted into evidence.

C. Prosecution Rebuttal

Celaya testified that he never read a transcript or listened to a recording of the statements that he gave to the police. He was unable to recall what he had told them.

III. Discussion

Appointed counsel has filed an opening brief which states the case and the facts, but raises no issues. Defendant was notified of his right to submit written argument on his own behalf, but he has failed to avail himself of the opportunity. Pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we have reviewed the entire record and have concluded that there are no arguable issues on appeal.

IV. Disposition

The judgment is affirmed.

Mihara, J.

WE CONCUR:

Elia, Acting P. J.

Bamattre-Manoukian, J.

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